

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
) Examiner: Szmal, Brian
David HUNG, *et al.*)
) Group Art Unit: 3736
Serial No. 10/762,978)
)
Filed: January 22, 2004) Attorney Docket No.: 12.024011 DIV
)
For: DEVICES, METHODS, AND)
SYSTEMS FOR COLLECTING)
MATERIALS FOR A BREAST DUCT)

September 27, 2007

MAIL STOP APPEAL BRIEF-PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT TO APPEAL BRIEF OF APPELLANT

Sir:

This Amendment to Appellant's Appeal Brief is filed in response to the Notification of Non-Compliant Appeal Brief mailed September 18, 2007. The Appeal Brief filed on August 22, 2007 was objected to due to a failure to contain the status of all the claims in the application. Specifically, the status of cancelled claims 1-78 were not included in the status of the claims section. Attached hereto is an amended status of claims section which includes the status of cancelled claims 1-78.

Status of Claims.

- Claims 79-100 were previously pending. Claims 1-78 and 79-89 have been cancelled.
- Claims 90-100 are currently pending. Claims 90-100 have been rejected. Claims 90-100 are the subject of this appeal.

Claims 90-100 were rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 62-65 and 68 of U.S. Patent No. 6,689,070 B2. Appellants assert that a terminal disclaimer may be filed at the time the claims are indicated to be allowable and therefore the Appellants have requested that this issue be held in abeyance until such a time that there is allowable subject matter.

Claims 90-100 were rejected under 35 U.S.C. 103(a), as being unpatentable over USP 5,843,023 to Cecchi in view of Hou *et al.* (A Simple Method of Duct Cannulation and Localization for Galactography before Excision in Patients with Nipple Discharge).

The claims appear in Appendix A. No other claims are pending.

Applicant: Hung
Serial No. 10/762,978
Filed: 01-22-04
Page 3 of 3

Docket No. 12.024011 DIV

It is not believed that any additional extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore is hereby authorized to be charged to Deposit Account No. 502855 referencing attorney docket number 12.024011 DIV.

Customer No., 0000 38732

Respectfully submitted,



Theodore R. Allen
Registration No. 41,578
Cytyc Corporation
250 Campus Drive
Marlborough, MA 01752
Tel (508) 263-8490
Fax (508) 263-2959